

November 7, 1989

FTB Notice 89-714

410:BRL:CN-89-714

Re: Deferral of Action on Refund Claims Pending Decision of Barclays Bank International, Ltd., Etc. v. Franchise Tax Board, 3 Civil C003388

The Franchise Tax Board will defer action on refund claims pending the outcome of Barclays Bank International, Ltd., Etc. v. Franchise Tax Board, 3 Civil C003388 (Barclays), in the following limited circumstances:

1. Deferrals will be available to those taxpayers who have filed claims for refund which are limited to the question of law raised by the Barclays appeal, that is the "one voice" issue. Any claims for refund that raise factual issues such as whether a unitary business exists or whether an individual taxpayer's cost of compliance is constitutionally impermissible will not be deferred. Those claims will be acted upon using existing procedures.
2. Deferrals will be available only when the matter is in the claim status, with no action having been taken with respect to the claim. As such, where a taxpayer has paid the deficiency and has limited the claim as indicated above, deferrals will be available at the audit level after the issuance of a Notice of Proposed Assessment. At the protest level, deferrals will be available after payment of the deficiency, but prior to the issuance of the Notice of Action with respect to the claim. Deferrals will also be available at the protest level in those instances where a taxpayer simply lets the assessments go final, pays the deficiency and thereafter files a claim that meets the requirements set forth above.

At the appeal level, no deferral will be available if the appeal is from a denial of a claim for refund unless certain conditions are met and Board of Equalization approval is obtained. See item 3 below. However, if the appeal is from an affirmation of proposed deficiencies, a taxpayer may obtain a deferral by dismissing the appeal, paying the deficiencies and filing a claim for refund that is limited to the question of law.

3. When a taxpayer pays the deficiency during the pendency of an appeal, the proceedings are converted, by statute, to an appeal from the denial of a claim for refund. Inasmuch as action is deemed to have already been taken on the claim, the granting of any deferral pending the outcome of Barclays will require the concurrence of the Board of Equalization. Assuming the Board of Equalization concurs,

the Franchise Tax Board will not oppose the taxpayer's request for a deferral in such cases where the taxpayer stipulates that the "deemed" claim for refund is limited to the one voice issue.

Taxpayers seeking deferral should include the following language in their timely filed claims:

This claim is limited to the "one voice" issue currently before the Third Appellate District Court in the case of Barclays Bank International, Ltd. Etc. v. Franchise Tax Board: Whether, in determining the corporate tax liabilities of an entity which is part of a multinational enterprise involving a foreign parent corporation, California's imposition of the requirements of World Wide Combined Reporting is consistent with the federal foreign affairs powers contained in the Commerce Clause of the United States Constitution. Taxpayer hereby requests deferral of action on this claim pending the outcome of that case pursuant to FTB Notice 89-714.

DRAFTING INFORMATION

For further information regarding this notice, contact Elleene K. Tessier, Supervising Staff Counsel, Appeals Bureau, or Eric J. Coffill, Senior Staff Counsel, Multistate Tax Affairs Bureau, at Franchise Tax Board Legal Division, P.O. Box 1468, Sacramento CA, 95812-1468.